

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-2494

DAVID LENIHAN and JAN LENIHAN,

Plaintiffs,

v.

COMPUTER ASSOCIATES
INTERNATIONAL, INC.,

Defendant.

MAGISTRATE JUDGE DBC

04 11701 DPW

RECEIPT # 57652
 AMOUNT \$ 150
 SUMMONS ISSUED N/A
 LOCAL RULE 4.1
 WAIVER FORM
 MCF ISSUED
 BY DPTY. CLK. F.O.M
 DATE 8/2/04

NOTICE OF REMOVAL

Computer Associates International, Inc. ("Computer Associates") hereby gives notice that pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, it is removing this action from the Commonwealth of Massachusetts Superior Court, Middlesex County, to the United States District Court for the District of Massachusetts. The grounds for removal are set forth below.

1. Computer Associates is the defendant in a civil action filed by David Lenihan and Jan Lenihan in the Commonwealth of Massachusetts Superior Court, Middlesex County, captioned *David Lenihan and Jan Lenihan v. Computer Associates International, Inc.*, Civil Action No. 04-2494 ("the Pending Action"). The Summons and Complaint in the Pending Action were served on Computer Associates on July 9, 2004. This Notice, therefore, is timely filed. *See* 28 U.S.C. § 1446(b).
2. Computer Associates is a Delaware corporation with its principal place of business in New York.
3. Based on information contained in the Complaint, Computer Associates asserts that David Lenihan and Jan Lenihan are citizens and residents of the Commonwealth of Massachusetts.

4. The Complaint concerns David Lenihan's employment with Computer Associates and the termination of his employment. David Lenihan asserts claims for wrongful termination of employment in violation of public policy, breach of contract, intentional interference with contractual relations, intentional deceit, intentional infliction of emotional distress, and breach of covenant of good faith and fair dealing. Jan Lenihan asserts a claim for loss of consortium.

5. David and Jan Lenihan seek, among other things, commission reimbursement of at least \$50,500, *see* Complaint at ¶¶ 17, 21, back pay, front pay, emotional distress damages, compensatory damages, and attorney's fees. Computer Associates has a good faith basis to believe that the alleged damages exceed \$75,000, exclusive of interest and costs.

6. The United States District Court for the District of Massachusetts has diversity jurisdiction over this matter because there is complete diversity of the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

7. Copies of all process, pleadings, and orders served on Computer Associates in the Pending Action are attached to this Notice as Exhibit A.


8. Pursuant to Local Rule 81.1(a), within thirty (30) days of the date hereunder, Computer Associates will file with this Court certified or attested copies of all records and proceedings in the state court and will file with this Court a certified or attested copy of all docket entries in the state court action.

WHEREFORE, Computer Associates requests that the Pending Action proceed before this Court as an action properly removed.

Respectfully submitted,
COMPUTER ASSOCIATES
INTERNATIONAL, INC.


By its attorneys,

HOLLAND & KNIGHT LLP


Paul G. Lannon Jr. (BBO # 563404)
David J. Santeusanio (BBO # 641270)
10 St. James Avenue
Boston, Massachusetts 02116
(617) 523-2700

Dated: August 2, 2004

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*I hereby certify under the pains and penalties
of perjury that this document was served upon
counsel for all parties in this case on
8/2/04 by Hand Delivered Mail*


CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

David Lenihan
Jan Lenihan

DEFENDANTS

Computer Associates International, Inc.

(b) County of Residence of First Listed Plaintiff Bristol
(EXCEPT IN U.S. PLAINTIFF CASES)

DE Corporation with
County of Residence of First Listed Principal Place of Business
(AND PLAINTIFF CASES ONLY) in NY

NOTE: IN BANK CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Peter H. Noone
Avery Doolley Post & Avery, LLP
90 Concord Avenue
Belmont, MA 02478 Tel: 617-489-5300

Attorneys (If Known)
Paul G. Lannon
David J. Santeusano
HOLLAND & KNIGHT LLP
10 St. James Avenue
Boston, MA 02116 Tel: 617-523-2700

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ DEF 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ DEF 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> Med. Malpractice <input type="checkbox"/> 365 Personal Injury <input type="checkbox"/> Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Resp. portionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | LABOR <input type="checkbox"/> 861 HIA (13950) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS v Third Party 26 USC 7609 | |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)

Plaintiff's complaint purports to assert claims for, among other things, wrongful termination, breach of contract, intentional interference with contractual relations and loss of consortium. Defendant removes pursuant to 28 U.S.C. §§ 1332 and 1441.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ Greater than \$75,000 CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY None

JUDGE
E

DOCKET NUMBER

DATE 8/2/04 SIGNATURE OF ATTORNEY OF RECORD Dore J. Santeusano

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) _____
David Lenihan v. Computer Associates International, Inc.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
N/A
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME Paul G. Lannon
- ADDRESS HOLLAND & KNIGHT LLP, 10 St. James Avenue, Boston, MA
- TELEPHONE NO. 617-523-2700